United Nations A/64/326 (Part I)/Add.2

General Assembly

Distr.: General
16 September 2009

Original: English

Sixty-fourth session
Item 136 of the provisional agenda*
Report on the activities of the Office of Internal Oversight Services

Report on the activities of the Office of Internal Oversight Services for the period from 1 July 2008 to 30 June 2009

Note by the Secretary-General

Pursuant to General Assembly resolution 59/272, the Secretary-General has the honour to transmit for the consideration of the Assembly his comments on part one of the report of the Office of Internal Oversight Services (OIOS) on its activities for the period from 1 July 2008 to 30 June 2009 and the addendum thereto (A/64/326 (Part I) and Add.1).

* A/64/150 and Corr.1.

09-51617 (E) 250909

Please recycle

Summary

The report of the Office of Internal Oversight Services covers its activities from 1 July 2008 to 30 June 2009. In the present note, the Secretary-General provides comments on a number of issues which he considers require clarification.

I. Introduction

1. The report on the activities of the Office of Internal Oversight Services (OIOS) for the period from 1 July 2008 to 30 June 2009 and the related addendum are welcome (A/64/326 (Part I) and Add.1). While every effort is being made to ensure the full implementation of the recommendations contained in the report, clarifications on a number of specific issues are provided below for the information of Member States.

II. Comments on specific paragraphs of the report on the activities of the Office of Internal Oversight Services for the period from 1 July 2008 to 30 June 2009

Strategic risk (para. 35)

2. With regard to the summary in paragraph 35 of the OIOS annual report on the review of results-based management at the United Nations (A/63/268), it should be noted that there is an existing process of (a) determining the strategic direction and objectives of the Organization for each biennium, based on the mandates approved by the General Assembly and/or the Security Council and (b) determining the budgetary requirements for the same biennium by linking resource requirements with the objectives approved by the Assembly in the previous year.

3. Furthermore, the proposed programme budget fascicles make clear reference to the strategic framework approved by the General Assembly based on the review and recommendation of the Committee on Programme Coordination. Functional commissions also review the strategic framework and programmatic aspects. The review by functional commissions is reflected in the strategic framework, time permitting, or the comments of the functional commissions are brought directly to the attention of the Committee on Programme Coordination or the Assembly, depending on the timing of the review. Strategic debates do take place within both the Committee and the Assembly. The sentence that reads, "By focusing mainly on the scrutiny of posts and other inputs, the budget process does not make clear reference to strategic priorities", without referencing the several stages of the budget review process, is taken out of context from the report. The analysis of budgetary requirements is based on the objectives that have been approved by the Assembly to be implemented in line with the approved mandates. Any new requirements for posts and non-posts are analysed taking full account of the strategic framework.

Compliance risk (para. 49)

4. In paragraph 49, OIOS stated that "The Department [of Management] also rejected the recommendation of OIOS that a determination be made on accountability for non-compliance with the Financial Regulations and Rules of the United Nations, stating that the source selection plan for the procurement exercise was only introduced in 2007, and was not, therefore, applicable to the selection process of American Express in 2004. OIOS noted, however, that the source selection plan was in effect in 2004, as set out in section 11.2 of the 2004 Procurement Manual, and reiterated its recommendation to determine accountability for the lapses".

5. The Secretariat wishes to note that the source selection plan, which serves as a guideline, is part of the Procurement Manual, not the Financial Regulations and Rules of the United Nations, and thus should not be linked to non-compliance with financial regulations.

6. Although the lowest-cost vendor was not selected, based on the combined technical and financial scores, the selection of the successful vendor was in the best interest of the United Nations. Best value for money does not necessarily mean the lowest cost. At no point has OIOS illustrated non-compliance with the principles of fairness, integrity, transparency and effective international competition mandated in financial regulation 5.12. Furthermore, the technical evaluation was conducted by an independent consultant.

7. In addition, the evaluation for travel management services was conducted by an independent consultant, who was selected prior to the promulgation of the 2004 United Nations Procurement Manual. The technical evaluation, which resulted in the selection of the consultant, was completed on 19 December 2003. The evaluation process, which guided the technical evaluation, was in fact performed in accordance with the provisions of the 1998 Procurement Manual. The procedures and guidelines for, inter alia, the establishment of the technical evaluation committee and the use of minimum requirements, weighting ratios and cut-off points, cited were not issued until January 2004 in the 2004 Procurement Manual. Since these provisions were not in force during the evaluation process, they could not have been applied to the evaluation of the request for proposals.

8. Management has confirmed that the entire procurement processes for the consultant company and the travel management services were conducted in compliance with the relevant regulations and guidelines. The report attempts to indicate that a break in procedures occurred. A potential breach in procedures and guidelines does not constitute non-compliance with financial regulations.

9. The last statement in paragraph 50 is a patent mischaracterization of the position of the Department of Management. At no time has the Department agreed to determine accountability for the perceived lapses discussed in that paragraph. However, in order to safeguard the interests of the United Nations, the Travel and Transportation Section has significantly strengthened contract management by monitoring the performance of American Express and the provisions of the contract. More specifically, American Express is notified in writing of any questions pertaining to its monthly invoices and its written response must be received before the invoice is certified. Also, in addition to verbal discussions on the annual budget review and approval at the periodic review meeting, the Travel and Transportation Section has formally communicated in writing with American Express for 2009 budget review and approval processes. The Section has created a recordkeeping system to support the enhancement of contract management.

Human resource risk (para. 76)

10. In paragraph 76 of its annual report, OIOS referred to its "in-depth evaluation of the Office of Human Resources Management (A/63/221)", in which it noted a significant lack of sufficient monitoring of the human resources authority delegated to other departments throughout the Secretariat, owing to the limited capacity dedicated to monitoring functions in the Office of Human Resources Management. At the time of the in-depth evaluation, the Planning, Monitoring and Reporting

Section had one post dedicated to monitoring. Based on the OIOS recommendation that "additional resources should be utilized to perform monitoring functions" (A/63/221, para. 84), the Office of Human Resources Management is currently in the process of filling two additional positions dedicated to monitoring, which were approved under the 2009-2010 support account budget. Assigning these additional resources to monitoring will enhance the capacity of the Office of Human Resources Management to enable regular and ongoing monitoring of how this authority is exercised, including further development of a framework and procedures for various forms of monitoring where monitoring missions constitute only a part of the monitoring work done by the Office.

III. Comments on the addendum to the report on the activities of the Office of Internal Oversight Services for the period from 1 July 2008 to 30 June 2009

Section B: Recommendations of particular concern (para. 6)

11. In section B of the addendum to the annual report (A/64/326 (Part I)/Add.1), OIOS provided specific commentary on selected recommendations that are of particular concern to it. In paragraph 6 of section B, OIOS refers to an audit of the supply of rations to the United Nations Transitional Administration in East Timor/United Nations Mission of Support in East Timor (AP2005/682/06, issued in November 2005). In its report, OIOS recommended that the Procurement Division, in conjunction with the Office of Legal Affairs, take action to recover $7.9 million in excess payments to a contractor, including $7.3 million for transportation costs. OIOS concludes that the Department of Management and the Office of Legal Affairs should have taken urgent action to recover the excess payments and that delays addressing the issue may result in further losses.

12. The Secretariat does not concur with the conclusion that "the Department of Management and the Office of Legal Affairs should have taken urgent action to recover the excess payments". The General Assembly should not be left with the impression that no action was taken in respect of this matter. Upon receipt of the above-mentioned audit report (AP2005/682/06), the Secretariat took immediate action to review the report, including the recommendation for recovery against the contractor concerned. On 21 April 2006, the Office of Legal Affairs provided to the Procurement Division of the Department of Management and to OIOS a detailed legal analysis of the contract in question, including of the OIOS recommendation that overpayments totalling $7.9 million should be recovered. In addition, the Secretariat does not agree with the statement that "delays in addressing the issue may result in further losses" since, as this matter was addressed immediately, it is unclear what would constitute further losses.

13. In its legal analysis, the Office of Legal Affairs noted that there were ambiguities in the pricing mechanism in the contract, which could explain the differing interpretations of OIOS and the contractor on sums due under the contract. Such ambiguities would make recovery very difficult. The Office of Legal Affairs also noted that the contractor had earlier submitted related claims in excess of $8.8 million and concluded that instituting proceedings would likely result in the contractor pressing its counterclaims. In the light of these difficulties, in particular the contractual ambiguities, and given the uncertainties and costs of arbitration, the

Office of Legal Affairs advised that arbitrating a claim for recovery would not be in the interests of the Organization.

14. In this regard, it should be further noted that on 7 December 2006, OIOS issued subsequent reports (Procurement Task Force investigation references PTF-007/06, PTF-022/06 and PTF-047/06) on an alleged fraudulent scheme in which the same contractor and a United Nations Procurement Officer secured another major rations contract for the United Nations Mission in Liberia (UNMIL). In that report, it was concluded that similar ambiguities may have been deliberately included in the contract by the United Nations Procurement Officer concerned as part of a fraudulent scheme to enrich the contractor.

15. In view of the identification of the potentially fraudulent scheme of the contractor, the Office of Legal Affairs referred the matter to the United States Attorney's Office for the Southern District of New York for investigation and potential criminal prosecution of the United Nations Procurement Officer and the Contractor in question. To date, the United States Attorney's Office has not instigated proceedings against either in relation to the alleged fraudulent scheme identified by OIOS. In the interim, in February 2007, the Office of Legal Affairs engaged the services of outside counsel to investigate whether recovery action for damages could be brought against the contractor. To date, outside counsel has not been able to secure sufficient evidence to support the conclusions of OIOS or to sustain the institution of arbitral or other proceedings against the contractor. The problems encountered in securing the required evidence stem in part from a lack of cooperation on the part of the former United Nations Procurement Officer in question, who had resigned from the Organization during an investigation into his involvement in another procurement fraud case, and the withholding by OIOS of the identities of confidential informants it had relied on in preparing its report on the alleged fraudulent scheme. It is noted that, should the United States Attorney's Office proceed to prosecute any potential fraudulent activity, the Office of Legal Affairs will take appropriate action to secure financial restitution as a victim in the case.

16. It should be noted that the summary of this case in paragraph 6 of the OIOS annual report implies that the overpayment of monies to the contractor has been clearly established. It should also be noted, however, that OIOS formed its conclusion that there were overpayments by making calculations based on an ambiguously drafted pricing mechanism. It is noted that there are differing interpretations of those contractual provisions and the interpretation of OIOS did not benefit from the legal advice of the Office of Legal Affairs. Neither the ambiguities identified in the contract on which OIOS based its recommendation for recovery, nor the legal advice of the Office of Legal Affairs, are referred to in the annual report.

Recommendations of particular concern (para. 9)

17. In paragraph 9 of its report, OIOS expressed concern that "more than three years after their issuance, the recommendations have not yet been fully implemented, thus posing security risks to ICT systems, data and equipment". The Secretariat wishes to reiterate that the Economic Commission for Europe has been implementing information technology security measures and assessing all of its current and new systems and their security on a continuous basis, including two

vulnerability assessments (ethical hacking) on its external systems, in particular its website, even though a more formal policy has not yet been finalized. In addition, no security incidents had occurred since the audit conducted in 2005. Therefore, the clause "thus posing security risks to ICT systems, data and equipment" is misleading, as it implies that no information and communications technology (ICT) security measures are in place.

Financial implications of OIOS recommendations, 1 July 2008 to 30 June 2009

Table 2
Recovery of excessive equipment costs, administrative fees and service charges by vendor — African Union-United Nations Hybrid Operation in Darfur (UNAMID): $12,377,508

18. The alleged recovery referred to above is broken down as follows:

Excessive equipment costs	$7 000 000
Administrative fees charged to UNAMID when there was no actual construction work	4 300 000
Charges for catering ($248,166) and management ($475,926) services not performed	724 092
Task orders for services for El Obeid that were not needed	313 416
Subtotal	**$12 337 508**

19. Regarding the administrative fees totalling $4.3 million for which the United Nations did not obtain value for the costs incurred, Management would like to state that the administrative fees of $4.3 million have been recovered.

20. Regarding the administrative fees for the task orders raised for El Obeid for the period between 1 April and 14 July 2008, the cost for services in El Obeid at $313,416 have all been recovered either directly or through negotiations.

21. Regarding the procurement of equipment at prices higher than those in the existing systems contracts, resulting in additional costs of $7 million to the United Nations, Management would like to clarify that the only disproportionate cost that has been identified is the amount of $3 million, which refers to purchases of generators. It must be noted that during the time period in question, the existing supplier for the system contract suffered from force majeure circumstances related to severe natural conditions and, therefore, was unable to fulfil its contractual obligations. Hence the need to procure generators, as a mission-critical item, from elsewhere, on an exigency basis in line with planning assumptions for a "worst case scenario".

22. It must also be added that in reference to the 500-kVA generators, it is correct to assume that if purchased through the systems contract, this cost would have been substantially less, but this would have been "delivered duty unpaid (DDU)" for the United Nations Logistics Base, and the vendor proposal was for an on-site delivery. Additionally, the lead time for the systems contracts was protracted and any delay faced with regards to generators ordered from the systems contract would have had a detrimental effect on the overall deployment timelines mandated by the Security Council. Furthermore, there was a need to mitigate the risk element attached to

ordering items from a third party and integrating them into another contractor's operation. Hence, the solution chosen took into account, among other factors, the unforeseen events faced by the supplier, prices and the most time-efficient delivery methods.

23. Management would like to note that at the time of signing the task orders for catering, UNAMID had in its possession various items of catering equipment. The equipment, which was to be used to provide catering services from 1 April 2008, was in various states of disrepair. During the mobilization period, which started at the date on which task orders were issued, the vendor was required to assess and repair the equipment for use under the contract, which commenced on 1 April 2008. The charging of fees for catering equipment maintenance was therefore justified. However, in accordance with the relevant change and task orders, an adjustment was made to the charges for management services and the maintenance of catering equipment, reducing the net amount payable for these services by $100,758.45. Much of this reduction was related to the lack of mobilization, management and equipment operation and maintenance services delivered during January 2008.

24. Regarding the finding that the vendor had not provided the services of cleaning, laundry, pest control, ground maintenance and garbage/refuse disposal services, Management would like to clarify that task orders included charges of $475,926 for management services for six months from February 2008, and that this charge was fully recovered from the vendor either indirectly or through direct negotiations.

Revision of contract management services — UNAMID: $6,200,000

25. Regarding the letter of assist with respect to the costs used, these were based on an hourly rate for a 12-hour working day and a 26-day month for each consultant. This is contrasted with the United Nations, where the working hours are eight hours per day, on a 22-day per month basis. The report continues to provide estimates of potential savings that would have been achieved had the contract been based on United Nations working hours. In this respect, Management would like to state that as the primary objective of the Organization was to enable UNAMID to implement its mandate as soon as possible, restricting or slowing down the amount of work of the consultants would have represented savings that would not have been in the best interests of the Organization. Management strongly believes that reducing the quantum of the consultants' work to the suggested levels is not in accordance with normally accepted commercial practice.

26. More specifically, Management would like to note that there are vast differences when undertaking a cost comparison of the United Nations work day/month and that of the letter of assist personnel. The Director/Chief of Mission Support usually defines the number of working hours and work days in a month. In a start-up mission, it is not unusual for United Nations employees to typically undertake 12-hour days and be required to work on Saturdays. The United Nations, however, only recognizes 21.75 days (and 7.5 hours per day) of productivity for compensation to its staff. The letter of assist proposal is reflective of the fact that its staff will work 6 days out of every 7 days up to 12 hours per day. The characterization of what constitutes a "normal" work day in the context of generating savings is misaligned with the objective of the mission to build capacity in the shortest period of time.

27. Furthermore, it must be considered that the consultant's work month is based on the provision of "consultant days" and not "consultants". The party retained under the letter of assist is obliged to provide 26 days of consultancy productivity in every month (for each position) irrespective of sick leave, annual leave, travel days or official holidays of its individual consultants. In contrast, the United Nations continues to pay its staff during these "down" periods, and is not required to provide alternate coverage during these absences. Accordingly, the comparison made is misaligned and the savings alleged are not substantiated.

28. In addition, it should be noted that cost comparisons were undertaken between the selected proposal and the proposals the United Nations had received for consultant contract management services from the competitive bidding exercise. It was found that the prices included in both proposals were comparable. Based on the cost comparison, the Secretariat managed to reduce the costs associated with certain types of personnel, resulting in savings of €234,705 euros. Perhaps more significantly, on average, the core personnel costs of the party whose services were retained were over 18 per cent less than those of the only comparable commercial bid received in two bidding exercises that were carried out during the process of contracting these services.

29. Finally, Management would like to state that as of December 2008, the finalized letter of assist had been signed.

Savings from rebates, use of online booking tool, post-fare auditing: $2,582,000

30. The Secretariat reiterates that OIOS holds a misconception of the online booking tool process at the United Nations. The travel agency must still book the reservation in the (Sabre) reservation system, reviewing all possible aspects of the itinerary to apply the lowest logical fare within the United Nations travel policy and, if necessary, make changes to the reservation made using the booking tool by or on behalf of the traveller and issue the corresponding ticket. Thus, the $5 transaction fee is in addition to the cost of the service, which can make the cost of issuing a booking tool ticket more expensive. The OIOS savings analysis represents an oversimplification of the functional capabilities of the booking tool, which is not realistic and, therefore, the analysis is not applicable. The audit team should recognize that, at the present time, the online booking tool represents a significant financial risk to the administration of the travel programme at Headquarters. Without an adequate review of travel arrangements by qualified travel agents, the Organization is exposed to weakened financial controls as a result of decisions made by individuals using the online booking tool.

31. It should also be noted that the online booking tool is not well suited for use in booking the complex and multi-leg itineraries involved in much of United Nations travel. The online tool also lacks the financial controls of, and linkage to, the United Nations travel authorization, certification and funding process for official travel. In fact, the tool works best for the booking of one-way and simple round-trip tickets.

32. However, the Travel and Transportation Section recognizes that the online booking tool technology will continue to improve and will ultimately result in a reduced involvement of the travel agency in the reservation process, thus lowering the operating cost to the United Nations.

33. Regarding the use of off-site travel management services in order to reduce transaction costs for travel management services, the Office of Central Support Services will consider the feasibility of using such a service configuration in the re-bidding process for the travel management services contract.

Recovery of fraudulent expenses — Office of Legal Affairs: $479,000

34. Table 2 of the addendum identifies the Office of Legal Affairs as the entity responsible for the recovery of an estimated $479,000 in fraudulent expenses identified in OIOS report PTF-R010/08. It is noted, however, that the Office of Legal Affairs is not identified in the relevant recommendations of the report, in which the Procurement Task Force recommended that the former staff member of the United Nations Office for Project Services (UNOPS) be required to reimburse UNOPS and the donors, who had collectively suffered losses in excess of $479,000 for the expenses listed in the report; and that the Organization take affirmative action in arbitration or in civil court for restitution of the misappropriated and converted funds.

35. It should be noted that the applicable recommendation simply states that the Organization is to take action for restitution of the misappropriated funds. Furthermore, OIOS has identified that it is UNOPS and its donors that have suffered the loss and such loss was suffered as a result of the alleged actions of a former UNOPS staff member. Accordingly, as the subject of the Procurement Task Force report and the entity responsible for the staff member concerned, as well as the misappropriated funds, it is for UNOPS, as an independent, self-financing organization, to take the appropriate action to implement the applicable recommendations. The Office of Legal Affairs can advise UNOPS if requested, but it is not the entity responsible for recovery, as stated in table 2 of the addendum.

Reduction in mission requirements — United Nations Interim Force in Lebanon (UNIFIL): $24,900,000

36. On page 27, OIOS reported a reduction in mission requirements associated with UNIFIL of $24.9 million as part of the financial recoveries. It should be noted, however, that the savings initially reported in the OIOS interim report was $15.052 million, a reduction which the Secretariat would like to confirm, was not due to implementation of the recommendation of OIOS. UNIFIL completed its ship-to-task analysis in February 2008 and regularly examines the maritime requirements. At the session of the Advisory Committee on Administrative and Budgetary Questions in February 2009, the mission reported that the estimated expenditures for the Maritime Task Force for the 2008/2009 financial period would be approximately $54.5 million (actual expenditures were $53.5 million) as a result of the significant and continuing reduction of the fleet in the area of marine operations. The Committee, noting the delayed deployment of vessels and aircraft for the Maritime Task Force, recommended that the resources of $75,261,200 proposed for naval transportation for the 2009/2010 financial period be reduced to $60,209,000, a reduction of $15.052 million.

37. The Secretariat is not clear regarding the source of the additional amount of $9.848 million ($24.9-$15.052) reflected in the final report of OIOS and therefore could not comment on it.

Recovery of overpayment to a bidder — United Nations Operation in Côte d'Ivoire (UNOCI): $37,477

38. UNOCI did not accept the OIOS recommendation, as OIOS had based the recovery amount of $37,477 on a price quoted by a vendor whom the mission had declared technically non-compliant with the terms of the bid requirements. The mission clarified that the price quotations of the two technically compliant vendors were $193,327.48 and $204,289.88 and confirmed that the contract was awarded to the lowest bidder.